IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5681 OF 2004

Rajinder M.Sodhi ...Applicant

Versus

M/s.Jamnadas Morarjee Finance

Pvt.Ltd. & Anr. ...Respondents

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Mr.Amit Ghas for Applicant.

Mr.M.S.Prasad for Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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**CORAM: A.M.KHANWILKAR, J.**

**DECEMBER 21, 2004.**

**P.C.**

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Prasad waives notice for Respondent No.1. Mr.Saste, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, the matter is taken up for final disposal forthwith, by consent.

4. The short question involved in this Application is: whether any case is made out against the Applicant/accused No.4 in the complaint as filed by the Respondent No.1. The only assertion made, as can be discerned from Paragraph No.3, is that the Applicant was one of the Director of the accused Company. Counsel for the Respondent No.1 has placed emphasis on the allegations contained in Para 9 of the complaint, which reads thus :

> "That the above cheque was issued in favour of the complainant towards the discharge of the liability of the Accused no.1 and since the Accused no.2 to 4 were fully incharge and in control of Accused no.1, and since Accused no.2 to 4 were jointly and severally responsible for the said payment due to the complainant and

since the said cheque has been dishonoured for the reasons stated hereinabove, all the Accused are liable to be prosecuted for the offence under section 138 r/w section 141 of the Negotiable Instruments Act and I pray that this Hon'ble Court be pleased to (a) issue the requisite process against all the Accused, (b) try and convict all the Accused of the offence under section 138 and impose punishment therefor in accordance to law".

5. It is not in dispute that the Applicant is not the signatory to the cheque. The assertion made in Para 9 as reproduced above, even accepting as it is, to my mind, does not make out case, so as to indicate complicity of the Applicant in the commission of the offence by the Company. Merely being a Director, does not invite liability for criminal action for the offence committed by the Company. No material facts have been provided as to how the Applicant was in-charge of the affairs of the Company or whether the Applicant had connived in the commission of the offence or was

negligent, because of which, the offence has occurred. Recently, I had occasion to examine these aspects **in Criminal Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. decided on 14th December 2004.**

6. Accordingly the Application succeeds in terms of prayer clause (a). The criminal action is quashed, only insofar as Applicant/accused No.4 is concerned.

A.M.KHANWILKAR, J.